IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 486 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHULABHAI MOTIBHAI PATEL

Versus

MALATAJ VIVIDH KARYAKARI SEWA SAHAKARI MANDALI LIMITED

Appearance:

1. Special Civil Application No. 486 of 2001

MR RAVINDRA SHAH for Petitioner No. 1

MR HM PARIKH for Respondent No. 1

MR DAXESH T DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated 14/05/1998 passed by the Board of of Nominees, Anand, in Lavad Suit No.790 of 1986, at Annexure-J to the petition, as also the order dated 28/11/2000 passed by the Gujarat State Cooperative Tribunal, Ahmedabad, (for short, "the

Tribunal") in Appeal No.446 of 1998, at Annexure-K to the petition.

2. The petitioner was elected as the Chairman of respondent no.1 Society and respondeat no.2 was employed as the Secretary of the Society. During the course of statutory audit u/s.84 of the Gujarat Cooperative Societies Act, 1961, it was found that an amount of Rs.93,802/- was misappropriated from the funds of the Society. The said misappropriation was admitted by respondent no.2 herein. The District Registrar, Nadiad, by order dated 10/08/1979, appointed Kheda District Central Cooperative Bank Ltd. as the Administrator. Thereafter, by order dated 04/01/1986, the District Registrar, Nadiad ordered the liquidation of the assets and again appointed the aforesaid Bank as the Liquidator of the respondent Society.

3. A suit being Lavad Suit No.790 of 1986 was filed by the aforesaid Liquidator before the Board of Nominees at Anand. The Board of Nominees by order dated 14/05/1998 allowed the said suit, at Annexure-J to the petition. Feeling aggrieved by the said order, the petitioner preferred appeal being Appeal No.446 of 1998 before the Tribunal. The Tribunal by order dated 28/11/2000 rejected the appeal preferred by the petitioner, at Annexure-K to the petition. Hence, this petition.

4. Mr.Ravindra Shah learned advocate for the petitioner has contented that the suit is time-barred and that since all the Members of the Managing Committee of the Society were responsible for the management of the Society, the Board of Nominees and the Tribunal ought to have passed decree against those Members also.

5. Mr.H M Parikh learned advocate for the respondent Society has submitted that neither the Members referred to by Mr.Shah were parties before the Tribunal nor they are parties before this Court. He has, therefore, submitted that the argument of Mr.Shah to pass decree against those Members also is not tenable inasmuch as the decree was confirmed on 14/05/1998 and the respondent Society had not preferred any appeal against those Members.

6. Having heard the learned counsel for the parties and on going through the averments made in the petition, I am of the opinion that the conclusion arrived at by both the Courts below that the petitioner and respondent no.2 herein were managing the affairs of the respondent

Society and that they were responsible to execute the Resolution of the respondent Society were just and proper. I find no infirmity in the findings arrived at by both the Court's below. Hence, no interference is called for by this Court in this petition.

7. In the result, the petition is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated. At this stage, Mr.Shah learned advocate for the petitioner requests for the extension of stay. Now, since this is a money decree, this Court cannot extend the stay. Hence the request of Mr.Shah is rejected.

(K. S. Jhaveri, J.)
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